Supreme Court, U.S.
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No. 92-20

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

BARBARA WINER,

Petitioner,

v.

LAURENCE H. WINER, LINDA R. WINER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

BRIEF OF RESPONDENTS LAURENCE H. WINER and LINDA R. WINER IN OPPOSITION

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14

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Supreme Court has federal question jurisdiction under 28 U.S.C. §1257 to review this matter involving issues solely of state law.

2. Whether the Massachusetts Appeals Court properly affirmed summary judgment dismissing Plaintiff-Petitioner Barbara Winer's claims because she failed to make the responsive showing required by Massachusetts law once Defendants-Respondents demonstrated they were entitled to such judgment since, under Massachusetts law, Petitioner cannot amend an express, irrevocable, recorded *inter vivos* trust created in 1965 by the parties' since-deceased father and terminated in 1986, to which she was a complete stranger, by now adding herself as a beneficiary.

3. Whether the Massachusetts Appeals Court properly affirmed summary judgment under state law in favor of Respondent Laurence H. Winer on his unanswered counterclaims for malicious prosecution and for abuse of process, based on uncontroverted facts set forth in uncontested affidavits and in light of insufficient appellate argument by Petitioner.

Page

TABLE OF CONTENTS

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 5

ARGUMENT:

I. The Supreme Court Lacks Jurisdiction To Review This Matter Involving Issues Solely of State Law 6

II. There Is No Special Or Important Reason To Occasion Review By This Court 9

CONCLUSION 10

Page

TABLE OF AUTHORITIES

Cases:

Enterprise Irrigation District v. Farmers Mutual Canal Co., 243 U.S. 157 (1917) 8

Faretta v. California, 422 U.S. 806 (1975) 5

Ford v. Flaherty, 364 Mass. 382 (1973) 5

Layne & Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387 (1923) 9

McDonald v. Oregon Railroad & Navigation Co., 233 U.S. 665 (1914) 8

Mmoe v. Commonwealth, 393 Mass. 617 (1985) 10

Rice v. Sioux City Memorial Park Cemetery, Inc., 349 U.S. 70 (1955) 9

Street v. New York, 394 U.S. 576 (1969) 6

Webb v. Webb, 451 U.S. 493 (1981) 6

Yee v. City of Escondido, ___ U.S. ___, 112 S.Ct. 1522 (1992) 6

Statutes and Rules:

28 U.S.C. § 1257 6

Sup. Ct. R. 10.1 9

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STATEMENT OF THE CASE

Through her somewhat incoherent *pro se* complaint in this action, Petitioner Barbara Winer ("Barbara") apparently seeks to amend an express, irrevocable, recorded *inter vivos* trust – the Linda Realty Trust ("Trust") – by adding herself as a beneficiary twenty-five years after the creation of the Trust in 1965, and three years after its termination in 1986. Respondents Laurence H. Winer ("Laurence") and Linda R. Winer

("Linda"), brother and sister of Barbara, were the co-trustees and beneficiaries of the Trust created by the parties' father who died in 1982. Laurence, a member of the Massachusetts Bar, also was named executor of his father's estate.

Barbara was not mentioned in the Trust; she was neither trustee nor beneficiary. Under Massachusetts law she never had any interest in or entitlement to the Trust whatsoever. Two successive, independent attorneys, whom Barbara retained but subsequently fired and tried to sue for malpractice and fraud (Pet. at 54-55), advised her that her claims at issue in this lawsuit are meritless. What she seeks is legally impossible under Massachusetts law; she has never advanced any legal authority or factual basis that supports her position.

Barbara's claims under the Trust are barred as a clear matter of Massachusetts law because the Trust was irrevocable and had not and could not have been amended, revoked or otherwise modified. For these reasons, the Massachusetts trial court properly awarded Laurence and Linda summary judgment on Barbara's claims, after patiently trying to explain to her in layman's terms why her position, based on nothing but her subjective belief, lacked any merit. She nonetheless stated she would appeal and continue to prosecute the baseless action. (*See* Pet. at 39).

Moreover, Barbara's *pro se* complaint in this action is only the most recent of a long series of senseless and frivolous legal actions designed solely to harass and annoy her brother Laurence. This is despite the fact that, in their sole discretion and without any legal obligation to do so, Laurence and Linda early on offered to treat Barbara entirely equally with themselves and

divide all Trust (and estate) net assets equally among all three. Inexplicably and contrary to her then attorney's advice (Pet. at 16), Barbara spurned all such offers which would have given her exactly what her own attorney requested and far more than she was legally entitled to. She fired her second attorney and proceeded *pro se*. Prior to this present action, a Massachusetts probate court judge found Barbara's objections to Laurence's administration of the estate to be entirely meritless. To the extent Barbara even now seeks to relitigate those claims in this action, they are barred by *res judicata*.

Unfortunately, Barbara is motivated solely by such an irrational animus against her brother that she has pursued to outrageous lengths a malicious campaign to frustrate Laurence's every attempt at proper administration of the Trust and the estate. This has included her filing dozens of meritless pleadings in both matters, and her attempts to disqualify each of three state trial judges she has appeared before based solely on their rulings against her. (*See* Pet. at 22, 32, 41). She apparently believes the entire Massachusetts judicial system has conspired against her. (Pet. at 64-65 n.15).

Finally unable and unwilling to bear any longer the substantial adverse financial and other effects of this campaign being waged against him, culminating in the present action, Laurence set forth counterclaims including ones for malicious prosecution and abuse of process under Massachusetts law. In her complaint, attachments and other documents she submitted to the courts, including the advice her previous attorneys had given her, Barbara herself produced incontestable documentary evidence of the frivolous, malicious, bad faith nature of her actions. This evidence was so clear and substantial and uncontroverted by Barbara that the trial court properly

found Laurence entitled as a matter of state law to summary judgment on his counterclaims. (Pet. at App. F., I.).

In short, no substantial question of law was presented by this bizarre appeal in the Massachusetts courts, and there certainly is no federal question giving the Supreme Court jurisdicton or warranting review by this Court. The Massachusetts Appeals Court most properly affirmed the award of summary judgment for Laurence and Linda on Barbara's claims since Laurence and Linda demonstrated they were entitled to such judgment and Barbara submitted no affidavit in opposition to summary judgment or otherwise set forth specific facts, as she could not do, showing there was a genuine triable issue. (Pet. at App. L. (5)-(8)). Similarly, Barbara never even answered Laurence's counterclaims for malicious prosecution and abuse of process, nor did she attempt to challenge the uncontroverted facts set forth in uncontested affidavits of Laurence and Linda submitted in support of their motion for summary judgment. She failed to demonstrate a genuine triable issue on the counterclaims as well. (Pet. at App. L. (11)). The Appeals Court also appropriately determined that the one-sentence paragraph in Barbara's brief addressing the counterclaims and simply alleging error in the most general and conclusive way constituted insufficient appellate argument. (Pet. at App. L. (9)-(11)).

On February 13, 1992, the Appeals Court therefore correctly affirmed summary judgment as to liability for Laurence on his counterclaims for malicious prosecution and abuse of process. (Pet. at App. L. (1)). The court, however, also determined that judgment for Laurence on a third, statutory counterclaim was not appropriate, and that the trial court's judgment was for one lump sum for

all three counterclaims. The Appeals Court therefore vacated the award of damages and remanded solely for a determination of damages on the two counterclaims upheld. (Pet. at App. L. (8)-(9), (11)-(13)). This has not yet occurred.

On March 24, 1992, the Massachusetts Appeals Court denied a petition for rehearing. (Pet. at App. M.). On March 30, 1992, the Supreme Judicial Court of Massachusetts, exercising its discretion under state law, denied further appellate review. (Pet. at App. A).[1]

SUMMARY OF ARGUMENT

The Supreme Court lacks jurisdiction because the claims in this case involve matters solely of state law. As the Massachusetts trial and appellate courts ruled, Barbara's claims are barred by clear principles of the Massachusetts law of trusts. Those courts also sustained Laurence's counterclaims under the Massachusetts law regarding claims for malicious prosecution and abuse of process. No state court addressed any federal issue. The mere allegation by a disappointed state litigant that she was denied due process because state courts ruled against her on the merits does not create a federal question. Since no federal question is even remotely implicated in this case, the Supreme Court lacks jurisdiction to review the matter.

Moreover, even if this Court somehow had jurisdiction, which it clearly does not, there certainly would be no

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[1] Denial of further appellate review in Massachusetts is not a decision on the merits. *Ford v. Flaherty*, 364 Mass. 382, 387-88 (1973). Petitioner inappropriately has designated her Petition as one for a writ of certiorari to the Massachusetts Supreme Judicial Court instead of to the Massachusetts Appeals Court. *See Faretta v. California*, 422 U.S. 806, 812 (1975).

special or important reason warranting certiorari. There is no credible indication of any error by the state courts. This simple state court dispute over a small family trust involves only the immediate litigants and raises no matter affecting the public interest or the interests of justice. Such a matter is not appropriately subject to Supreme Court review, and the petition for certiorari should be denied.

ARGUMENT

I.

THE SUPREME COURT LACKS JURISDICTION TO REVIEW THIS MATTER INVOLVING ISSUES SOLELY OF STATE LAW.

Petitioner asserts jurisdiction in the Supreme Court pursuant to "28 U.S.C. §1257(3)" [sic]. (Pet. at 4). There is, however, no federal question even remotely implicated in this matter and the Court does not have jurisdiction.

Barbara's claims in this matter involve simply "black-letter" issues of the Massachusetts law of trusts which were so clear as to warrant summary judgment against her. Similarly, the counterclaims at issue involve only the law in Massachusetts as to that state's causes of action for malicious prosecution and abuse of process. Again, the law and uncontroverted facts warranted summary judgment for Laurence on his counterclaims. These matters purely of state law are not properly subject to review in the Supreme Court. *Webb v. Webb*, 451 U.S. 493, 494 n.1 (1981). The fact that neither state appellate court passed on any federal question strongly confirms the lack of any such issue here. *Webb*, 451 U.S. 495-96, *quoting Street v. New York*, 394 U.S. 576, 582 (1969). *See also Yee v. City of Escondido*, ___ U.S. ___ , 112 S.Ct. 1522, 1531 (1992) (Court would

not consider substantive due process claim not raised below and which state courts did not address).

In a transparent attempt to manufacture jurisdiction for the Court, Barbara alleges a deprivation of due process simply because state court judges had the temerity to rule against her on her meritless claims. This is all her invocation of due process amounts to. (Pet. at 31-32, 41-42, 47, 51, 53). Despite the plethora of process afforded her at all levels of the state court system, Barbara has never achieved any measure of success. For this she blames everyone but herself, refuses to see the frivolous nature of her claims, and attacks anyone who disagrees with her. She spurned the good advice of her two successive, independent attorneys (*see* Pet. at 16), and then tried to sue each of them for malpractice and fraud. (Pet. at 54-55). Then she voluntarily proceeded *pro se,* apparently believing she cannot trust any attorney. She moved to disqualify each state court trial judge she faced simply because of their rulings against her. (Pet. at 22, 32, 41). She tried without effect to initiate disciplinary proceedings against lawyers and judges, including her brother Laurence. (Pet. at 12, 65 n.15). She cast flagrant aspersions upon the Massachusetts Appeals Court, accusing it of "sanction[ing] . . . fraud" and issuing "an incomplete and evasive" opinion and order. (Pet. at 47-48). This supposedly demonstrates that court's "abrogation of her constitutional rights." (Pet. at 47). Similarly, she now asserts the Massachusetts Supreme Judicial Court denied her due process by "abus[ing] its governmental authority" and "sanction[ing] . . . fraud" in denying her petition for further appellate review. (Pet. at 53). Indeed, in a footnote to this passage Barbara reveals that she apparently believes the entire Massachusetts judicial system is conspiring

against her and that the Supreme Judicial Court "maliciously and unconscionably discriminated against [her] in order to cover up the gross abuses of the judicial system." (Pet. at 64-65 n.15). Nowhere, however, does she advance a single fact to support her wild accusations. Rather, she inappropriately asks this Court to "judicially notice" the rightness of her cause. (Pet. at 53).

None of this sad fantasy begins to create a federal question for Supreme Court jurisdiction. In essence, Barbara's argument, such as it is, would convert *every* disappointed state court litigant into a Supreme Court petitioner with a "due process" federal question for review. Such a litigant simply would argue that the state courts have ruled against her on matters of state law and therefore denied her due process. This is all Barbara's convoluted and fantastic claim here amounts to. The Court, however, long ago rejected any such notion of federal question jurisdiction, holding:

> It is elementary and needs no citation of authority to show that the due process clause of the 14th Amendment does not control methods of state procedure or give jurisdiction to this court to review mere errors of law alleged to have been committed by a state court in the performance of its duties within the scope of its authority concerning matters non-Federal in character.

McDonald v. Oregon Railroad & Navigation Co., 233 U.S. 665, 669-70 (1914). *See also Enterprise Irrigation District v. Farmers Mutual Canal Co.*, 243 U.S. 157, 166 (1917) ("The due process clause does not take up the laws of the several states and make all questions pertaining to them constitutional questions, nor does it enable this court to revise the decisions of the state courts upon questions of state law.")

There is no semblance of a federal question here. The Court therefore lacks jurisdiction and the Petition should be denied for that reason alone.

II.

THERE IS NO SPECIAL OR IMPORTANT REASON TO OCCASION REVIEW BY THIS COURT.

Even if a federal question somehow were present to sustain the Court's jurisdiction, which clearly is not the case, there are no "special and important reasons" for the Court to grant review. Sup. Ct. R. 10.1. There is no conflict between courts, and the Massachusetts courts did not decide *any* federal question let alone an important, unsettled such question that the Supreme Court should resolve. Sup. Ct. R. 10.1(c).

Petitioner is simply an unsuccessful and disappointed state court litigant in an unfortunate and totally unnecessary dispute over a small family trust. The Supreme Court does not "sit for the benefit of the particular litigants." *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955). Certiorari is not granted "except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties." *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923). Barbara has not demonstrated, and can not, that there is any matter here affecting the public interest or the interests of justice. The Supreme Judicial Court of Massachusetts found no reason for further appellate review of this matter, and there certainly is no basis for Supreme Court review.

Petitioner's underlying claim to amend the Trust is barred by "black-letter" Massachusetts law as the state trial court found in granting Respondents summary judgment. Similarly, the trial court had no difficulty in

awarding Laurence summary judgment on his counterclaims based on applicable Massachusetts law and the uncontested facts before that court. The Massachusetts Appeals Court carefully reviewed the entire record before it and found nothing that could be construed even liberally to support Barbara's position. (Pet. at App. L. (7)-(8)). As that court said, "[T]he rules bind a pro se litigant as they bind other litigants." (Pet. at App. L. (10), *quoting Mmoe v. Commonwealth*, 393 Mass. 617, 620 (1985)). The Appeals Court nevertheless interpreted a Massachusetts statute to bar one of Laurence's counterclaims thereby requiring a redetermination of damages, but otherwise affirmed the trial court on procedural and substantive grounds. Barbara received full, fair and impartial treatment by the Massachusetts courts. Nothing suggests otherwise, and there is no reason to grant certiorari.

CONCLUSION

Fot the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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